IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1871 OF 2004

IN

SUIT NO.1313 OF 2004

Naigaon Co-operative Hsg.Society Ltd. ... Plaintiff.

vs.

The Brihanmumbai Mahanagar Palika & ors. .... Defendants.

Mr.R.S.Apte i/b. A.S.Karwande, for Plaintiff.

Mr.D.H.Mehta with K.N.Gaikwad, for Defendant no.1.

Mr.P.K.Dhakephalkar i/b. A.A.Kocharekar, for Defendant nos.2 to 4.

CORAM: D.K.DESHMUKH,J.

DATED: 17th June,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff has filed the suit claiming decree of declaration that the lease deed which has been executed by the Corporation in favour of defendant nos.2 to 4 is not valid because the plot was allotted to the plaintiff- co-operative society and therefore, the lease deed should have been executed in favour of the Society. I have gone

through the record. The record consists of judgments delivered by this Court from time to time. I find from the judgments that there are clear findings recorded in identical situation in relation to the adjoining plot that the building standing on the plot is constructed by some other persons than the Society, and that Society is not the owner of the building. It stands to reason that the Corporation has granted lease of the plot in favour of the persons who own the building standing on the plot. It is further to be seen that the Corporation has granted lease in favour of defendant nos.2 to 4 on the basis of the letter and the resolution passed by the Society in the year 1970 nominating persons for execution of the lease deed in their favour. However, the action taken by the Corporation of executing the lease deed in favour of those persons who were nominated by the society is challenged by the plaintiff on the ground that the resolution passed in the year 1970 is cancelled in the year 2000 by the Society. Taking overall view of the matter therefore, in my opinion, it appears that this notice of motion is nothing but an attempt to prolong the litigation which virtually results in abusing process of the court. The notice of motion is therefore, disposed of. The plaintiff however is directed to pay costs of this notice of motion to defendant nos.1 & defendant nos.2 to 4 as incurred by defendant no.1 and defendant nos.2 to 4. Notice of Motion disposed of.